STATE OF MICHIGAN

COURT OF APPEALS

DEDOES INDUSTRIES, INC,

Plaintiff-Appellee,

v

TARGET STEEL, INC,

Defendant-Appellant.

UNPUBLISHED
May 24, 2005

No. 254413
Oakland Circuit Court
LC No. 03-046648-CK

Before: Neff, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order denying its motion for summary disposition under MCR 2.116(C)(10). We reverse.

Plaintiff, a manufacturer of steel products, claims that defendant, a supplier of various types of steel stock, breached an alleged three-year contract created by the parties. Plaintiff claims that after it had negotiated a three-year price guarantee with defendant, which was evidenced in a March 6, 2001 price quote from defendant, it accepted the three-year contract with an April 20, 2001 purchase order. However, plaintiff's general manager admitted during his deposition that the purchase order did not contain a quantity term. Regarding the price quote, it contained prices for steel stock valid through 2001, and allowed defendant to increase its prices the following two years by ten percent each year. Defendant argues that it never entered into a long-term contract with plaintiff because, in pertinent part, there was no agreement that defendant would be the exclusive supplier for plaintiff during that time period.

Following its alleged acceptance, plaintiff claims to have done business with defendant for approximately seventeen months. In April, 2002, defendant sent plaintiff a price quote, which increased its prices. Plaintiff's purchasing manager stated that she contacted defendant's sales representative and told him that one of the product's price increases went beyond the ten-percent cap. She claims the representative admitted that the quote was in error and promptly decreased the price in conformance with the ten-percent cap. However, a July 19, 2002 letter indicated that due to market conditions, defendant was again raising its prices. These prices went beyond the available ten-percent cap increase. As a result, plaintiff sued defendant alleging, in pertinent part, breach of contract.

Defendant argues that regardless whether a three-year contract was entered into, the alleged contract was not enforceable as a matter of law. We agree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A court must consider the entire record in the light most favorable to the nonmoving party. *Id.* The trial court may grant summary disposition under MCR 2.116(C)(10) if it determines there is no genuine issue of material fact and judgment is warranted as a matter of law. *Id.* A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record presents an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Any contract between the parties was one for the sale of goods and so falls under the Uniform Commercial Code. Under UCC 2-106, MCL 440.2106(1), a "contract for sale" includes both a present or future sale of goods. Under UCC §2-201(1), the quantity term of a contract for the sale of goods must be in writing before the contract is enforceable. *Lorenz Supply Co v American Standard, Inc*, 419 Mich 610, 614; 358 NW2d 845 (1984). While other terms of the contract may be proven by parol evidence, the quantity may not. *Id.* See also *In re Frost Estate*, 130 Mich App 556, 559; 344 NW2d 331 (1983). However, this Court has deemed "all" to be a quantity term. *Id.* at 565.

Regarding the documents that created the alleged contract, plaintiff's general manager admitted that the purchase order did not contain a quantity of steel. The steel acceptance sheet merely contained steel specifications. The only document that plaintiff claims contained a quantity term was the March 6, 2001 price quote. The price quote indicated that defendant would satisfy plaintiff's steel needs and that the quote was good "for all of 2001 and the next two years." However, reasonable minds could not construe the above language as containing a quantity term because the language referred to a time period. Plaintiff asserts that it would have been impossible to state a quantity in the April 20, 2001 purchase order because the quantity of steel it required consistently fluctuated based on the requirements of the parties it had contracted with. Regardless, the documents did not contain the quantity term required by the statute of frauds to be enforceable.

Plaintiff argues that its April 20, 2001 "acceptance" was a written confirmation and an exception to the statute of frauds. The written confirmation exception, MCL 440.2201(2), provides that

> [b]etween merchants, if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the [statute of frauds] requirements . . . against the party unless written notice of objection to its contents is given within 10 days after it is received.

Plaintiff argues that defendant failed to challenge plaintiff's purchase order within ten days and, therefore, the requirements for the exception were satisfied. However, plaintiff's reliance on this exception is misplaced. The written confirmation exception is used to verify a previous oral agreement between the parties, see *Ace Concrete Products Co v Charles J Rogers Construction Co*, 69 Mich App 610, 612 n 2; 245 NW2d 353 (1976), citing *American Parts Co, Inc v American Arbitration Ass'n*, 8 Mich App 156, 166; 154 NW2d 5 (1967), but plaintiff's general manager admitted during his deposition that the purchase order acted as plaintiff's acceptance to

the March 6, 2001 price quote. Therefore, no contract could have existed until plaintiff accepted defendant's offer. Moreover, the exception requires a writing that satisfies the statute of frauds; as already indicated, the purchase order did not contain the required quantity term to meet this condition. *Id.* at 613.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Donald S. Owens
/s/ Karen M. Fort Hood